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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 387 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD.
Versus
COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 387 of 1992
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following questions are referred for the opinion of this Court at the instance of the revenue :

1 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the contribution made as a statutory liability under section 69 of the Gujarat Rajya Sahakari Co.op.Societies Act, is not deductible as a revenue expenditure U/s.28/37 of the Income-tax Act?"

2 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in the interpretation and application of section 35-C of the Income-tax Act,1961?"

3 "Whether, on the facts and in the circumstances of the case, the appellate Tribunal was right in law in holding that entire expenditure of Rs.64,78,011/- was not eligible for weighted deduction u/s.35C of the Income-tax Act?"

4 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of agricultural animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s.35-C of the Income-tax Act?"

5 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that depreciation u/s.32 and investment allowance u/s.32A was not allowable on Milk tester machines worth Rs.10,67,907/- and Insulated Van Tanker worth Rs.2,76,320/- supplied by Indian Dairy Corporation as assistance on account to carry out Operation Food II programme of the Central Government".

2 The assessment year is 1983-84. It is the common ground between the parties that all the five questions referred to us already stand answered and hence it is not necessary to set out the facts in detail. Question No.1 stands concluded by a decision of this Court in assessee's own case in Income Tax Reference No.290 of

1984 dated 24/12/1999. Following the said decision we answer the first question in the negative i.e. in favour of the assessee and against the revenue.

3 In so far as question nos. 2, 3 and 4 are concerned in the case of Kaira District Co.op. Milk Producers Union Ltd. vs. C.I.T., this Court in Income Tax Reference No.32 of 1987 dated 2/7/2001 has held that the assessee shall be entitled to deduction of entire expenditure u/s.35C of the Income-tax Act,1961. In light of the said decision the questions, being questions no. 2, 3 and 4 are answered in the negative i.e. in favour of the assessee and against the revenue.

4 So far as question No.5 is concerned, following the decision in assessee's own case in Income Tax Reference No.290 of 1984 dated 24/12/1999 we answer the said question in the negative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt